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**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA**

Takeover Industries, Inc., a Nevada
corporation,

Plaintiff,

v.

Michael Holley and Chirine Holley, husband
and wife; David Eisenberg and Jane Doe
Eisenberg, husband and wife;

Defendants.

Case No.

VERIFIED COMPLAINT

For its claims against the Defendants, Plaintiff Takeover Industries, Inc. alleges as follows:

THE PARTIES

1. Plaintiff Takeover Industries, Inc. is a Nevada corporation with offices in Nevada and California (and its principal place of business in California).

2. Defendants Michael Holley and Chirine Holley are residents of this district and believed to reside in Cave Creek, Arizona.

3. Defendants David Eisenberg and Jane Doe Eisenberg are believed to be residents of Carmel, Indiana.

4. Plaintiff is informed and believes that each of the individual Defendants took actions as agent, employee, and/or representative of each of the other Defendants.

1 In taking the actions alleged, each Defendant was acting within the course and scope of
2 the agency, representation, or employment relationship with knowledge, acquiescence
3 and/or ratification by each and every other Defendant for the acts taken.

4 5. To the extent that any Defendant is married, it is alleged that each actor
5 took the actions for the benefit of and on behalf of his/her martial community.

6 **JURISDICTION AND VENUE**

7 6. This Court has jurisdiction pursuant to 28 U.S.C. §1332 as the controversy
8 is between citizens of different states and the amount in controversy exceeds \$75,000.

9 7. Venue is proper in this District pursuant to 28 U.S.C. §1391 as a substantial
10 part of the events and omissions giving rise to the claims occurred in this District.
11 Moreover, Defendants each used the means and instrumentalities of interstate commerce,
12 including but not limited to: interstate telephone communications; interstate electronic
13 communications; and interstate transactions between federally insured banking
14 institution(s), all originating from within this District and/or benefitting this District.

15 **GENERAL ALLEGATIONS**

16 8. Upon information and belief, Defendant Michael Holley is a sales
17 professional specializing in the sports and nutraceutical fields.

18 9. Defendant Holley has been involved in several companies that have
19 developed or promoted sports beverages and related products. On information and belief,
20 Defendant Holley has experience in management, accounting, and corporate structuring.

21 10. In or about 2021, Defendant Holley and a colleague named Toby McBride,
22 an established beverage industry veteran, put together a company and brand based upon
23 performance water products and energy drinks. The products were to be marketed under
24 the brand NXT LVL.

25 11. Defendant Holley and Mr. McBride incorporated in Nevada as Takeover
26 Industries, Inc. (“Takeover”) but wished to operate as a publicly-traded company.

1 12. Defendant Holley was instrumental in a deal where Labor Smart , Inc., a
2 publicly-traded entity, trading on the OTC Markets under the symbol LTNC, acquired
3 Takeover, and Takeover became a wholly-owned subsidiary of Labor Smart.

4 13. After the acquisition of Takeover by Labor Smart, Defendant Holley was
5 named a Director of Labor Smart and became the Chief Operating Officer and Treasurer
6 of Takeover, while also sitting on the Board of Directors of Takeover.

7 14. Defendant Holley and Mr. McBride worked with a well-known fitness and
8 nutrition advocate, Joseph Pavlik, who was also an Officer and on the Board Takeover
9 and an Officer of Labor Smart.

10 15. Defendant Holley, along with Mr. Pavlik and Mr. McBride, quickly put
11 together a brand that developed an industry buzz. The flagship products were “NXT
12 LVL” hydrogen-infused water and an energy shot developed by Mr. Pavlik.

13 16. Takeover began to work with Jason Tucker, a branding and business
14 consultant with expertise in licensing, leveraging intellectual property, Internet sales,
15 marketing, and finance. Mr. Tucker saw the potential of Takeover and put his efforts into
16 moving the company forward on all fronts.

17 17. Takeover offered Mr. Tucker an ownership/shareholder interest in the
18 company as payment for his services. By June 10, 2021, the Directors of Takeover held a
19 “Special Meeting” and resolved that:

- 20 a. The Company would have four Directors: Defendant Holley, Messrs.
21 Tucker and Pavlik, and a gentleman named Toby McBride;
- 22 b. Mr. Tucker would be appointed as the President of the Company, while
23 Defendant Holley would remain its Treasurer and be appointed as both the
24 Chief Operating Officer and Chief Financial Officer;
- 25 c. Mr. McBride would act as the Company’s Chief Executive Officer and
26 Secretary; and
- d. The parties would cooperate to fulfill all paperwork requirements necessary
to complete these elections and appointments.

1 18. Under this arrangement, Takeover has become remarkably successful. The
2 company immediately secured an endorsement deal with boxing legend Manny Pacquiao
3 and his Manny Pacquiao Foundation and has since secured endorsement deals with
4 Grammy Award-winning artist and professional gamer “T-Pain,” and other notables
5 including MMA Champions, NFL players, and various celebrities.

6 19. Takeover’s online store is active. The NXT LVL beverage product line
7 (which includes hydrogen-infused water products and 2 oz. “Gamer Shots” that have
8 proven to be very popular and, at times, sold out), are among the highest rated beverage
9 products for their respective categories on Amazon.com, and the Takeover online store
10 continues to generate substantial sales with little advertising.

11 20. Takeover has also:

- 12 a. Secured retail commitments to place its products on the shelves of over
13 10,000 stores in 2022;
14 b. Entered into exclusive manufacturing deals to source its products; and
15 c. Entered into substantial endorsement deals to promote its products,
including the “Official Water of the Professional Fighters League” (PFL).

16 21. Takeover has retained experts in beverage sales, marketing, and an
17 established public relations firm to further promote the NXT LVL products.

18 22. Defendant Holley hired Defendant David Eisenberg to assist with
19 accounting/bookkeeping functions during the company’s growth.

20 23. Although Takeover had only begun in or about February 2021, by the time
21 it attended the National Advancing Convenience Store (“NACS”) industry trade show in
22 October 2021, Takeover’s NXT LVL Hydrogen Water was awarded the CSP Best New
23 Beverage Product (beating Smartwater+, a Coca-Cola® product, and other brands).

24 24. As Takeover was skyrocketing, the four principals unanimously agreed that
25 they would not distribute profits to any of them unless distributions were made evenly
26 and with unanimous consent. The goal was to continue growing Takeover and its brands.

1 25. At the same time, Takeover was updating the books and accounting of its
2 parent company, Labor Smart. Labor Smart had been subjected to speculation among
3 OTC “day traders” who often buy and sell large volumes of penny stocks in short periods
4 of time because of the spike/growth in Takeover, which obviously affected Labor Smart’s
5 pricing and value.

6 26. Despite efforts to bring the Labor Smart books current, it became apparent
7 that Takeover would need to “spin off” from Labor Smart and operate under its own
8 stock ticker. Mr. Tucker began to oversee the spinoff process, and he (for Takeover)
9 retained the services of third-party Accounting and Legal professionals who specialized
10 in this type of business transaction.

11 27. In September and October 2021, vendors began expressing frustrations to
12 Mr. Tucker (and others) about Takeover’s late payment(s) or non-payments of
13 outstanding invoices/commitments.

14 28. By October 2021, Defendant Holley became ill and was hospitalized.

15 29. Officers/Directors Tucker and McBride requested that Defendant Holley
16 provide access to the Takeover bank account(s) so that the bills could be paid/outstanding
17 issues could be resolved.

18 30. Defendant Holley was the only Takeover officer/director with access to the
19 bank account(s); Defendant Eisenberg could view the accounts/statements, but only
20 Defendant Holley could manage the funds and/or access the monies. Nonetheless,
21 Defendant Holley denied any other Takeover officers/directors to have direct access.

22 31. Defendant Holley instructed Defendant Eisenberg to “share information”
23 with the others but not to grant access or control, despite Defendant Holley’s
24 hospitalization and incapacity.

25 32. Mr. Tucker requested .pdf copies of all bank records, which Mr. Tucker
26 then provided to the companies’ outside Accountant for review.

1 33. The records revealed that Defendant Holley had been making **significant**
2 distributions to himself without any authorization, and Defendant Holley had apparently
3 “hired” his own daughter (Courtney Holley) and was paying her from Takeover funds.

4 34. Mr. Tucker reported the initial findings and then engaged General Counsel
5 and the Accountant to conduct further review. This review revealed:

- 6 a. Defendant Holley authorized over \$750,000 in distributions without
7 obtaining Board Approval. Some of those distributions *may* have
8 been acceptable, but they were done clandestinely and with less than
9 full Board Approval;
- 10 b. Distributions were not made evenly, as the owners had agreed;
- 11 c. Defendant Holley distributed \$51,500 to One Elite Sports, LLC, an
12 entity that is controlled/owned by Defendant Holley;
- 13 d. Defendant Holley (and/or Eisenberg) failed to enter certain
14 debts/income into the accounting records;
- 15 e. Third parties were paid without any invoices or documentation;
- 16 f. Vendors and third-party sponsorship partners were not paid; and
- 17 g. Distributions authorized by Holley were not properly taxed or
18 reported for tax accounting purposes.

19 35. Takeover hired an outside law firm to conduct an independent investigation
20 and learned that Defendant Holley had committed several tortious acts and that
21 Defendant Eisenberg either aided and abetted or facilitated these wrongs by failure to
22 report known issues to the company.

23 36. In December, the Board of Directors conducted a “Special Meeting” and
24 voted to: a) remove Defendant Holley from the Board of Directors; and, b) direct
25 Takeover’s President (Mr. Tucker) to remove Defendant Holley from the bank account(s)
26 and gain access to the accounts.

 37. Once Defendant Holley was removed, Takeover’s “full access” to the
records showed additional discrepancies and misdealing, including:

1 a. Defendant Holley had charged tens of thousands of dollars in
2 personal expenses to Takeover, even after the hospitalization (and up
until December 2021); and

3 b. Defendant Holley had been allowing his family to make personal
4 purchases through Takeover even while he was hospitalized.

5 38. On December 22, 2021, outside legal counsel for Takeover made demand
6 to Holley for repayment of improper amounts and disposition of his stock.

7 39. Takeover also demanded that Defendant Holley return all of the passwords
8 and login information he had in his possession, which gave him access and control to
9 Takeover's banking, its online presence (through domains and purchasing websites), and
10 its emails and shared documents/drives.

11 40. To date, Defendant Holley has refused to return the company passwords or
12 credentials, essentially holding the company "hostage."

13 41. Takeover filed suit against Defendant Holley in the U.S. District Court,
14 Central District of California, Western Division on or about January 5, 2021.

15 42. Takeover also sought injunctive relief in the California matter, arguing that
16 the Company should be granted access to the Company's domain/key accounts to
17 preserve operations of the entity.

18 43. In response, Defendant Holley:

19 a. Moved to dismiss the California case, arguing that jurisdiction was
20 proper here, in the United States District Court in and for Arizona;

21 b. Argued that injunctive relief was inappropriate because he did not
22 intend to harm the Takeover entity in the future;

23 c. Argued that all of his clandestine activity was justified because he
24 and another Board Member (Mr. McBride) agreed to make
distributions without regard to the other officers/directors; and

25 d. Disputed the Board's removal action of him solely based on
26 **improper notice**.

1 44. Despite the pending action in California, and while that matter was
2 pending, Plaintiff further learned that:

- 3 a. Defendant Holley (or someone at his direction) has caused the
4 Takeover email/Microsoft Outlook administrator passwords to be
5 changed – making employees/contractors unable to access or make
6 changes to certain company email accounts;
- 7 b. Defendant Holley has continued paying personal expenses on his
8 company credit card, including a personal storage unit in Cave
9 Creek, Arizona;
- 10 c. Defendant Holley has continued to receive funds/checks paid to the
11 Company through a mail location/Post Office Box in Cave Creek,
12 Arizona. Defendant Holley has failed to deliver those checks or
13 otherwise “post” the funds to the Company’s books;
- 14 d. Third parties continue to send billing statements/invoices to
15 Defendant Holley and/or other email addresses within the Company,
16 which Plaintiff cannot access (and which causes financial damages
17 to Plaintiff, including past due and delinquency charges); and
- 18 e. Defendant Holley (or someone acting at his direction) has caused the
19 GoDaddy.com account password to be changed - making employees/
20 contractors unable to make certain changes to Company-owned
21 domains, including www.takeoverind.com, www.nxtlvusa.com, and
22 www.nxtlvglobal.com.

23 45. Plaintiff has now voluntarily dismissed the California lawsuit and re-filed
24 here to avoid any potential argument on personal jurisdiction. This is done in the interest
25 of efficiency and for the benefit of the Company.

26 46. It should be noted that Takeover (through its corporate legal counsel) made
a written demand on Defendant Holley on or about December 22, 2021, seeking
repayment of a portion of the funds improperly taken from the company. Takeover also
demanded Holley return all passwords and login information that he had in possession,
allowing the Company to continue performing without interruption. Defendant Holley
failed to respond and continually delayed until a lawsuit was filed.

1 60. Defendant Holley's actions since the time the California lawsuit was filed
2 cannot be excused or considered good faith or lack of knowledge because he has
3 intentionally kept himself solely in charge of the Company's domains/emails/post office
4 box. While intentionally failing to allow others' access, Defendant Holley has permitted
5 certain Company debt to remain unpaid and has withheld Company payments received.

6 61. Defendant Holley's actions have caused damages to the Company, its
7 shareholders, and the other Officers/Directors in an amount to be proven at trial but, in no
8 event, less than the \$75,000 amount necessary to establish diversity jurisdiction.

9 62. Even if Defendant Holley were to return the wrongfully-obtained property
10 or otherwise repay his theft/conversion, the return of money would not nullify his acts.

11 63. In addition, and because of the intentional nature of this claim, Defendant
12 Holley may be liable for punitive or exemplary damages and/or subject to disgorgement
13 of his shareholder, officer and director positions.

14
15 **COUNT III**
16 **Unjust Enrichment**

17 **Against Defendants Holley**

18 64. Plaintiff repeats, re-alleges, and incorporates the foregoing paragraphs as if
19 repeated here verbatim.

20 65. Defendant Holley received benefits, both financial and intangible, from
21 Plaintiff and Plaintiff's work. Defendant Holley has retained benefit(s) far in excess of
22 what was expected that he would receive or be compensated, and it would be inequitable
23 for Defendant Holley to retain the full value of the benefits he took/received.

24 66. Even if no other claim is proved, Plaintiff may recover on a *quantum meruit*
25 basis for the value of the benefits/monies that Defendant Holley has inequitably retained.
26

VERIFICATION

By signing below, the undersigned verifies under oath and acknowledging the penalties of perjury:

I am Jason Tucker, President of Takeover Industries, Inc., and of legal age and competency to testify in Court. I have read the foregoing Complaint dated this 7th day of March, 2022, drafted on behalf of Takeover (Plaintiff). I have also read and granted authority for the previous pleadings (filed in California) and have endeavored to “update” all factual allegations of the Plaintiff as they exist today. I stand ready to testify in Court and would testify consistently with this Verification and the pleadings.

I can hereby verify that all matters stated in this Complaint and the request(s) for expedited and injunctive relief are true and correct, upon my information and belief, and I will continue to verify facts and/or update legal counsel on behalf of the Plaintiff.

I declare these statements to be true and correct and made under the penalty of perjury.

Executed on this 7th day of March, 2022.

/s/ Jason Tucker ¹
Jason Tucker

¹ This electronic signature is meant to comply with Arizona Rules and/or the Federal Rules that permit such electronic signatures in this Court. Declarant Jason Tucker remains available and ready to testify consistently with this verification/execution.